HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 410/2004 (S/S)
Naresh Chandra
Vs
State of Uttaranchal & another.

Approved for reporting.

_____

~~Not approved for reporting~~

Date of decision 13.05.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 410 of 2004 (SS)

Naresh Chandra Naithani ……. Petitioner

Versus

State of Uttaranchal & anothers ……. Respondents

Sri Arvind Vashishth, Advocate for the petitioners.
Standing Counsel for the respondents.

Dated: 13.05.2004

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties at length.

The petitioner has filed the present writ petition for the issue of a writ, order or direction in the nature of mandamus directing the respondents to consider the application of the petitioner for special B.T.C.

Brief facts giving rise to the present writ petition are that on 25.07.2003 an advertisement was published where the applications were invited for six month training of special B.T.C. in District Uttarkashi from the candidates possessing B.Ed; L.T.; B.P.Ed; D.P. Ed. And C.P. Ed. Training exclusively recognized by State of Uttaranchal or U.P.

The petitioner has alleged that he is domicile of State of Uttaranchal however, he has obtained B.Ed. certificate from the Lucknow University, Lucknow in the year 1996.

Pursuant to the advertisement dated 25.07.2003 applications were invited for special B.T.C. training consequently for appointment on the training of Assistant Teacher in Primary School from those candidates who are residents of Uttarkashi District and who possess graduate decree and also obtained B.Ed./ L.T./ D.P.Ed./ and B.P.Ed. as regular candidates from the institutions recognized by State of U.P. or Uttaranchal.

The petitioner has stated that certificate of B.Ed. was granted to them in the year 1996, therefore, he is entitled to be considered for the training of Assistant Teacher in Special B.T.C.

The petitioner has relied upon the judgment of Division Bench of Allahabad High Court in the case Upendra Rai vs. State of U.P. and others, 2002 U.P. L.B.C. 1340. The Division Bench has considered that recognition of certificate of teaching or any other training course is equivalent to B.T.C. and is also covered under National Council for Teacher Education act 1993. Similar controversy came up for consideration before the Division Bench and it has been held as under:

"Even otherwise, the appellant could be considered for appointment in view of the proviso to section 11 of the U.P. Basic

Education Act, 1972 as it stands substituted by the U.P. Basic Education (Amendment) (second) Ordinance 1999 in as much as he has had obtained before the commencement of the Ordinance the diploma in education which was recognized by the State Government as equivalent to BTC. The proviso reads as under:

"Provided the Board shall have power to make appointment of a person as to teacher of Basic School if he possesses a degree or diploma in education and has been selected for Basic Teacher Certificate Training before the commencement of the U.P. Basic Education (Amendment) Second Ordinance, 1997 or has obtained before such commencement training qualification of Basic Teachers Certificate Hindustani Teachers Certificate, Junior Teacher certificate, Certificate of Teaching or any other training course recognized by the State Government.

The impugned circular dated 11.8.97, it cannot be gainsaid, is fraught with the effect of depriving the appellant of his right to be considered for appointment as Asstt. Teacher in Junior Basic School run by the Basic Shiksha Parishad, Uttar Pradesh. The view we are taking receives reinforcement from the decision of the Supreme Court in Suresh Pal vs. State of Haryana AIR 19687 SC 2027, wherein it has been held that since at the time when the petitioners therein had joined the course, it was recognized by State of Haryana and it was on

the basis of the said recognition that the petitioners had joined the course, it would be unjust to tell the petitioner now that though at the time of their joining the course it was recognized yet they cannot be given benefit of such recognition and the certificate obtained by them would be futile because during the pendency of the course it was de-recognized by the State Government on 9th January 1985.

In so far as the impugned advertisement is concerned, the classification therein between candidates who have passed requisite teacher training course from a recognized institution of Gorakhpur and those who have passed such course from the recognized institution outside Gorakhpur is arbitrary and violative of Article 14 in that a territorial classification cannot be justified except on the basis of a reasonable nexus between the classification and the object sought to be achieved by such classification.

The matter of B.T.C. has further been considered in Writ Petition No. 4945 of 1999, where a single Judge of Allahabad High Court has considered the Government order depriving the course of C.P.Ed. equivalent to BTC and the following directions were made:

"In the similar circumstances relating C.P.Ed. from Amrawati being derecognized on 9.1.1985 by the State of haryanha the Apex Court in the case of Suresh pal vs. State of Haryana reported in AIRT 1978 SC 2027 held that the petitioners there in when joined the course

it was recognized by the Government of Haryana and so it would be unjust to tell the petitioners that their certificate would be futile.

Applying the principle and policy as referred to above; I am of the opinion that those candidates having C.P.Ed. from Amarawati, who were admitted for training till 28.2.1995 canno be treated as not qualified as till that date the said course was enjoying recognition and so they should be protected by the principle decided in the case of Suresh Pal (supra). Moreover, the G.O. dated 23.2.1996 proposes to derecognize of C.P.Ed. course of the State of Uttar Pradesh has been stopped the Government order dated 23.3.1995 makes it clear that the C.P.Ed. course in the State of Uttar Pradesh has been decided to be spotted from session 1996-97. Therefore, the G.O. dated 28.2.1996 derecognishing the C.P.Ed. course from Amarawati also is to be read with G.O. dated 23.3.1995, such recognition will take effect alongwith C.P.Ed. from State run institutions of Uttar Pradesh i.e. from session 1996-97.

Therefore, the C.P.Ed. candidates either from State run institution of Uttar Pradesh or from Amarawati will not treated as disqualified from appointment until C.P.Ed. course is brought to an end in terms of the G.O. dated 23.3.2995 i.e. from session 1996-97 C.P.Ed. from Amarawati, should not be treated in a different manner than the C.P.Ed. course of State of Uttar Pradesh in view of the fact that the

G.O. dated 28.2.1996 did not express such intention. But, I made it clear that the policy of the Government in respondent to considering the C.P.Ed. candidates after B.T.C. candidates and for appointing them as untrained teachers with an opportunity to obtain training during the employment will continue in terms of the Government's prevailing policy.

Considering the aforesaid facts and circumstances the petitioner shall be at liberty to file a representation before the respondents within a period of 15 days after the receipt of the certified copy of this order. The respondents are directed to decide the representation of the petitioner within 15 days after receipt thereof, provided the petitioner fulfils the criteria of eligibility in accordance with rules and regulations.

With the above observations the writ petitions are disposed of. There will be no order as to costs.

Rajesh Tandon, J.

13.05.2004
*Dhyani